CHRISTOPHER KHOO EWE CHENG

v.

PUBLIC PROSECUTOR

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
AHMAD FAIRUZ JCA
[CRIMINAL APPEAL NO: A-05-7 OF 1997]
21 JULY 1998

CRIMINAL PROCEDURE: *Sentence - Adequacy of sentence - Culpable homicide not amounting to murder - First offender and 24 years of age - Sentenced to 14 years imprisonment - Whether excessive - Mitigating factors*

The 24-year-old appellant in this case had pleaded guilty to a charge of culpable homicide not amounting to murder under the first limb of s. 304 of the Penal Code read with s. 34 thereof, and upon conviction was sentenced to 14 years' imprisonment. The facts showed that the appellant had participated in the killing of the deceased wherefore, having robbed the deceased of some cash, he and his gang had choked and strangled the helpless victim to death. The appellant appealed against the sentence imposed, and argued that the court ought to pass a lighter sentence in view of his age and of the fact that he was a first offender.

Held:
Per Shaik Daud Ismail JCA

[1] The gruesome killing in this case was entirely senseless and unnecessary. In the circumstances, there was no mitigating factor which would entitle this court to interfere with the learned judge's discretion in imposing the sentence he did.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu yang berumur 24 tahun telah mengaku salah terhadap tuduhan homisid salah yang bukan membunuh di bawah jejari pertama s. 304 Kanun Keseksaan di baca bersama s. 34 di situ, dan setelah sabitan dihukum 14 tahun penjara. Fakta menunjukkan bahawa perayu telah terlibat menyebabkan kematian si mati di mana, selepas merompak sejumlah wang tunai dari si mati, beliau dan rakan-rakannya mencekik dan menjerut leher mangsa sampai mati. Perayu merayu terhadap hukumannya, dan berhujah bahawa mahkamah harus menjatuhkan hukuman lebih ringan memandangkan usianya yang muda dan fakta bahawa beliau adalah pesalah pertama.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Pembunuhan ngeri dalam kes ini sungguh tidak masuk akal dan sangat tidak perlu. Dalam hal sedemikian, tidak terdapat apa-apa faktor peringanan bagi membolehkan mahkamah ini campur tangan dalam budibicara hakim menjatuhkan hukuman seperti yang dibuatnya.

[Rayuan ditolak.]

Legislation referred to:
Penal Code, ss. 34, 302, 304

For the appellant - Chai Kai Wooi; M/s Chai & Partners
For the respondent - Ahmad Rosli; A-G's Chambers

[Appeal from High Court, Ipoh; Criminal Trial No: 55-2 of 1996]

Reported by WA Sharif

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal against the sentence of fourteen years imprisonment imposed by the High Court at Ipoh on the appellant for an offence of culpable homicide not amounting to murder.

The appellant Christopher Khoo Ewe Cheng together with three others were originally charged for an offence of murder under s. 302 read with s. 34 of the Penal Code. At the outset of the trial the prosecution tendered an amended charge of culpable homicide not amounting to murder, an offence under s. 304 (1st limb) read with s. 34 of the Penal Code, against the appellant. He pleaded guilty to the amended charge, and understood the nature and consequences of his plea. After hearing the facts of the case the learned judge convicted him on the amended charge and after hearing and considering submission in mitigation, sentenced him to 14 years imprisonment with effect from the date of arrest.

The facts of the case as revealed by the prosecution appear to be rather gruesome and they are that the appellant and three others positioned themselves in the vicinity of the Hong Kong & Shanghai Bank (HKSB) at the Old Town, Ipoh in the wee hours of the morning of 4 August 1995 around 2 to 3am. One Lau Siw Won (deceased) came in his Proton car and as be was about to withdraw some money from the Automated Teller Machine (ATM), two of the four approached him and forced him back to his car. The appellant took over the wheel. In the car they robbed the deceased of RM1,030 cash, his

ATM and credit cards and his hand phone. They then forced the deceased to give them the Personal Identification Number (PIN) of his ATM account which he did. The appellant then went to the ATM and tried out the ATM card with the PIN number given by the deceased and having satisfied himself that the deceased actually gave the correct PIN number, he returned to the car. They then drove the deceased to an abandoned mining pool beside Sungai Kinta, where the deceased was brought out and made to lie face down on the sand and his hands were tied behind his back with a string. They then placed a plastic bag over his head and face and choked him. This act did not, however, killed the deceased but he only fainted. On seeing that the deceased was still breathing, they untied his hands and with the same string strangled his neck tightly until he died. After that they put him in a gunny sack and in turn put the sack in the boot of the car. They then drove to another abandoned mine near the Industrial Park Sri Pengkalan and dumped the sack containing the body of the deceased in the pool.

Learned counsel for the appellant urged upon us to reduce the term of imprisonment as he felt it was excessive in the circumstances, since the appellant was only 24 years old at the time of the offence, a first offender and that he had pleaded guilty to the amended charge. It is indeed normal in cases where an offender who pleads guilty to a charge would be considered for a reduction of his imprisonment sentence to about 1/3 of the sentence the court imposes on him. The court also takes into consideration any mitigating factor put forward. In the circumstances of this case we could not find any mitigating factor which entitled us to interfere with the learned judge's discretion in imposing the sentence that he did. We agreed entirely with his view that the gruesome killing in this case was entirely senseless and unnecessary. The deceased had acceded to all the demands of the appellant and his gang. Having got what they wanted they could have dumped him somewhere and takes his car away but instead they killed him, by choking and strangling him. Whatever mitigating factor was available would negate this. In the light of this we found that we had no reason whatsoever to interfere with the sentence imposed by the learned judge. We dismissed the appeal and confirmed the sentence.